

# **Exhibit W**

**Stewart, Charles**

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**From:** Mitchell, Elizabeth  
**Sent:** Tuesday, September 25, 2007 6:11 PM  
**To:** debnicks@bellsouth.net  
**Cc:** jwallace@ago.state.al.us; kpate@balch.com; Stewart, Charles; dwalker@balch.com  
**Subject:** FW: Horton v. Williams, et all - Revised Draft Motion for Extension  
**Attachments:** BHM-#1621628-v2-Horton\_NSM\_\_Motion\_for\_Extension\_of\_Time\_to\_Disclose\_Experts.DOC

Deborah,

Please let me know if you do not receive this attachment.

Thanks,  
Elizabeth

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**From:** Mitchell, Elizabeth  
**Sent:** Tue 9/25/2007 11:11 AM  
**To:** debnicks@bellsouth.net; jwallace@ago.state.al.us  
**Cc:** Stewart, Charles; Walker, Dorman; 'Pate, Kelly'  
**Subject:** Horton v. Williams, et all - Revised Draft Motion for Extension

Deborah and Jack,

Attached is a revised draft of Defendants' Motion for Extension. Please let me know if you are agreeable to this motion or if you have any suggested changes.

Thanks,  
Elizabeth Mitchell

Elizabeth Brislin Mitchell  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**ELIZABETH HORTON**

)

**Plaintiff,**

)

**v.**

)

**DON WILLIAMS, individually and  
in his capacity as the Manager of  
National Seating and Mobility, Inc.,  
NATIONAL SEATING AND  
MOBILITY, INC., GERALD  
SHOCKLEY, individually and in his  
capacity of a special agent of the  
Alabama Attorney General's Office,**

)

**CIVIL ACTION NUMBER:  
2:06-cv-526-MHT-TFM**

**Defendants.**

)

)

)

**DEFENDANTS' UNOPPOSED MOTION TO EXTEND  
DEFENDANTS' EXPERT DISCLOSURE DEADLINE**

The Defendants, National Seating and Mobility, Inc. ("NSM"), Don Williams, and Gerald Shockley (collectively, the "Defendants") jointly move this Court pursuant to Federal Rule of Civil Procedure 6(b) for an extension of the Court's expert disclosure deadline, allowing Defendants thirty days after their receipt of Plaintiff Elizabeth Horton's Rule 26 compliant expert disclosures, or thirty days after Plaintiff's deposition, or thirty days after the depositions of

Horton's retained experts, whichever is longer, within which to make their expert disclosures. This motion is based upon the following grounds:

1. Plaintiff's expert disclosures were served on August 31, 2007 and did not include expert reports for any of her experts. Plaintiff provided only the names and addresses of five medical doctors and counselors, previously unknown to defendants, who have provided care to her. Tab A. ("Plaintiff's Expert Disclosures"). Thus, Plaintiff violated the Court's June 19, 2007 Scheduling Order, § 8 (doc. 50) (requiring disclosure of reports of retained experts) and Rule 26(a)(2)(B) (same).
2. Defendants' expert disclosures are due September 28, 2007.
3. Before Defendants can submit reports of retained experts on medical issues, they would need time to review Plaintiff's medical records, and possibly depose her retained experts. Defendants are in the process of seeking medical releases from Plaintiff. None of these medical care providers were identified in Plaintiff's Rule 26 initial disclosures, consequently Defendants could not commence discovery of their records until now. (Discovery seeking information about medical providers was served on Plaintiff on August 17, 2007, after Defendants learned that Plaintiff would be making medical claims, but Plaintiff has not yet responded to those requests.)

4. Defendants also have not yet been able to take Plaintiff's deposition. The parties originally scheduled Plaintiff's deposition for August 16, 2007, but on August 14, 2007, Plaintiff asked to postpone her deposition because of her current psychological condition and the advice of her physician. Since then, Defendants have continued to follow up with Plaintiff's counsel in an effort to find dates for Plaintiff's deposition.

5. For these reasons, Defendants need additional time to take Plaintiff's deposition, obtain and review her experts' reports, and gather any other information necessary to make an informed decision on the type of expert testimony they will need to adequately defend themselves against Plaintiff's claims. Without knowing Plaintiff's experts' opinions or even the particulars of Plaintiff's claims, Defendants cannot be expected to identify rebuttal testimony to be offered by their experts.

6. This case is not set for trial until June 23, 2008 and thus this extension will not result in any prejudice to the parties. The deadline for completing discovery is January 31, 2008.

7. This motion is being filed by NSM on behalf of all of the Defendants, and with their approval.

8. Plaintiff's counsel has no objection to the requested extension.

WHEREFORE, Defendants respectfully move the Court to grant this request for extension of time to allow Defendants thirty days after their receipt of Plaintiff's Rule 26 compliant expert disclosures, or thirty days after Plaintiff's deposition, or thirty days after the depositions of Plaintiff's retained experts, whichever is longer, to serve their expert disclosures.

Respectfully submitted,

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Charles A. Stewart III (STE067)  
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**Attorneys for Defendant  
National Seating & Mobility, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that on September \_\_, 2007, I served the foregoing on the following:

Deborah M. Nickson  
Attorney for Petitioner  
2820 Fairlane Drive, Suite A-10  
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Dorman Walker  
Balch & Bingham  
P.O. Box 78  
Montgomery, AL 36101

Jack W. Wallace, Jr.  
Office of the Attorney General  
11 South Union Street  
Montgomery, AL 36130

by placing a copy of same in the United States Mail, first-class postage prepaid and addressed to their regular mailing addresses.

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